

REMARKS

This amendment is submitted in response to the non-final Office Action mailed on June 3, 2005. Claims 1-16 are pending in this application. In the Office Action, Claims 1-16 are rejected under 35 U.S.C. §102. In response Claims 1-3 have been amended. This amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-16 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,849,335 to Ballevre et al. ("*Ballevre*"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Applicants have amended independent Claims 1-3 to recite, in part, a method comprising the step of administering to a mammal a nutritional composition including a protein source having at least 80% by weight of a whey protein and/or a protein mixture which simulates the amino acid profile of whey protein (hereinafter "simulated whey protein"). This amendment is supported in the specification, for example, at page 3, line 28 to page 4, line 8. In contrast, Applicants respectfully submit that *Ballevre* fails to disclose or suggest every element of the present claims.

For example, *Ballevre* fails to disclose or suggest a nutritional composition including a protein source having at least 80% by weight of a whey protein and/or simulated whey protein as required by the present claims. Instead, *Ballevre* discloses that carob protein comprises about 40% to about 100% by weight of the protein source of its nutritional composition. As a result, the product of *Ballevre* cannot anticipate the present claims.

Further, *Ballevre* is entirely directed to the use of a protein source comprising carob protein, which is rich in glutamine. See, *Ballevre*, Abstract and column 2, lines 33-42. *Ballevre* is concerned with a glutamine rich nutritional composition used for glutamine supplemented diets. See, *Ballevre*, column 2, lines 27-30. This teaches away from the present claims, which are directed to nutritional compositions having low glutamine concentrations.

As stated in Applicants' specification, the present claims are based upon the surprising discovery that administration of nutritional compositions that contain whey protein or simulated whey protein, for example, increase glutamine levels in humans or animals even though the

whey protein (and simulated whey protein) contain relatively low amounts of glutamine. See, specification, page 3, lines 4-11. Thus, the present claims are directed to a novel way of increasing glutamine levels in mammals and not simply a way of supplementing glutamine as in the cited reference. For example, this “increasing effect” is clearly demonstrated by Example 2.

In sum, Applicants have discovered the novel way of increasing glutamine levels in mammals by providing nutritional compositions that have relatively low glutamine levels themselves. Applicants have carefully researched the desirability, applicability and levels of protein sources to be effectively used for such increases to occur. Nowhere does the *Balleve* recognize or successfully employ the claimed nutritional products to increase glutamine levels in mammals. As a result, *Balleve* fails to disclose or suggest the presently claimed methods.

For the reasons discussed above, Applicants respectfully submit that Claims 1-3 and Claims 4-16 that depend from these claims are novel, nonobvious and distinguishable from the cited reference.

Accordingly, Applicants respectfully request that the rejection of Claims 1-16 under 35 U.S.C. §102(b) be withdrawn.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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